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LEGAL ALERT

What does the Bill for strengthening SERNAC look like after the decision of the Chilean Constitutional Court?

On January 18th, 2018, the Chilean Constitutional Court ruled on the preventive control of constitutionality for the bill (Bulletin No. 9369-03) that amends Law No. 19,496 Consumer Protection Act. The Court declared the following abilities that were proposed for the National Consumer Service – SERNAC as unconstitutional:

1. The Court's decision declared as unconstitutional the jurisdictional abilities which allowed SERNAC to directly sanction suppliers without the need to resort to a court. The ruling considered that these new powers would infringe on the basic principles of separation of functions, impartiality and legality of the courts, and the right to due process.
2. Secondly, the Court deemed the normative abilities that the bill granted to SERNAC as unconstitutional. Such abilities allowed SERNAC to dictate general and mandatory rules and instructions. These powers were considered unconstitutional due to their "broad and unlimited" nature, which violate the principle of legal reserve, recognized by the Constitution for provisions that may affect fundamental rights.
3. Finally, the proposed authority of SERNAC to discretionally request information from other public organisms, even when such information qualifies as "confidential", was declared unconstitutional because such ability contravenes the constitutional protection of private life.

All other proposed modifications of the bill were deemed constitutional by the Constitutional Court. Thus, the following modifications introduced by the bill will remain in force: the increase of fines, the modification to the statute of limitations, the amendment to class action procedures, the provenance of collective moral damage and the direct and automatic compensation for unjustified suspension of utilities, among other matters.

The bill will become law, once it is enacted and published in the Official Gazette.

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